

Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 155: PURCHASES

§1825-B. BIDS, AWARDS AND CONTRACTS

1. Purchases by competitive bidding. The Director of the Bureau of General Services shall purchase collectively all goods and services for the State or any department or agency of the State in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services. Except as otherwise provided by law, the Director of the Bureau of General Services shall make purchases of goods or services needed by the State or any department or agency of the State through competitive bidding.

[1991, c. 780, Pt. Y, §70 (AMD) .]

2. Waiver. The requirement of competitive bidding may be waived by the Director of the Bureau of General Services when:

A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served; [1999, c. 105, §1 (AMD) .]

B. The Director of the Bureau of General Services is authorized by the Governor or the Governor's designee to make purchases without competitive bidding because in the opinion of the Governor or the Governor's designee an emergency exists that requires the immediate procurement of goods or services; [1995, c. 119, §1 (AMD) .]

C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source; [1991, c. 780, Pt. Y, §70 (AMD) .]

D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products; [1989, c. 785, §2 (NEW) .]

E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving:

(1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research and public service; and

(2) A sharing of project responsibilities and, when appropriate, costs; [2011, c. 555, §1 (AMD) .]

F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids; or [1999, c. 105, §2 (AMD) .]

G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need. [1999, c. 105, §3 (AMD) .]

[2011, c. 555, §1 (AMD) .]

3. Report. By January 15th of each year the Director of the Bureau of General Services shall submit to the joint standing committee of the Legislature having jurisdiction over state and local government a report concerning any waivers from the competitive bidding provisions established in subsection 2, paragraph E.

[1991, c. 780, Pt. Y, §70 (AMD) .]

4. Registry of suppliers. Suppliers desiring to have their names entered on a registry of suppliers must submit a request to the Director of the Bureau of General Services in writing. The Director of the Bureau of General Services may prescribe the manner and form in which such a request must be submitted and may limit the number of names of out-of-state bidders on any registry. The name of any supplier entered in such a registry who fails to submit a bid on 3 consecutive proposals or invitations to bid may be removed from the registry at the discretion of the Director of the Bureau of General Services, except that the Department of Corrections remains on any registry until the Department of Corrections requests that the department be removed from that registry.

[1991, c. 780, Pt. Y, §70 (AMD) .]

5. Alternate bids. When, in bid forms and specifications, an article or material is identified by using a trade name and catalog number of a manufacturer or vendor, the term "or approved equal," if not inserted with the identification, is implied. There is a presumption that any reference to a particular manufacturer's product either by trade name or by limited description has been made solely for the purpose of more clearly indicating the minimum standard of quality desired. Consideration must be given to proposals submitted on approved equal alternate commodities to the extent that such action serves the best interest of the State. The bidder submitting a proposal on a commodity other than as specified shall furnish complete identification, descriptive literature or data with respect to the alternate commodity that the bidder proposes to furnish. Lack of such information on the bid must be construed to mean that the bidder proposes to furnish the exact commodity described. The State reserves the right to reject any bids, in whole or in part, to waive any formality or technicality in any bid and to accept any item in any bid.

[1989, c. 785, §2 (NEW) .]

6. Record of bids. Each bid, with the name of the bidder, must be entered on a record. Each record, with the successful bid indicated, must be open to public inspection after the letting of the contract. A bond for the proper performance of each contract may be required of each successful bidder at the discretion of the Director of the Bureau of General Services, with the approval of the Commissioner of Administrative and Financial Services.

[1991, c. 780, Pt. Y, §70 (AMD) .]

7. Awards to best-value bidder. Except as otherwise provided by law, orders awarded or contracts made by the Director of the Bureau of General Services or by any department or agency of the State must be awarded to the best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State. If the bidder that was initially awarded the order or contract does not perform, the Director of the Bureau of General Services may cancel the contract and award a new contract to the 2nd best-value bidder. The order or contract may not be awarded to a bidder that the Director of the Bureau of General Services determined was not in compliance at the time the initial bid was submitted.

[1997, c. 263, §1 (AMD) .]

8. Tie bids. The Director of the Bureau of General Services shall award contracts or purchases to in-state bidders or to bidders offering commodities produced or manufactured in the State if the price, quality, availability and other factors are equivalent.

[1991, c. 780, Pt. Y, §70 (AMD) .]

9. Determination of best-value bidder. In determining the best-value bidder, the Director of the Bureau of General Services or any department or agency of the State shall, for the purpose of awarding a contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

[1997, c. 263, §2 (AMD) .]

10. List of state preferences published. The Director of the Bureau of General Services on or before January 1st of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The Director of the Bureau of General Services or any department or agency of the State may rely on the names of states and percentages as published in determining the best-value bidder without incurring any liability to any bidder.

[1997, c. 263, §2 (AMD) .]

11. Rulemaking; unfair competition. State departments and agencies may not achieve cost savings due to cost differentials that derive from a bidder's failure to provide health and retirement benefits to its employees. The State Purchasing Agent shall adopt rules governing the purchase of services and the awarding of grants or contracts for personal services to establish a basis for bid price and cost comparison among businesses that provide health and retirement benefits to their employees and those that do not provide these benefits. The rules must include a methodology for calculating bid price and cost differentials for services provided by businesses and state employees due to the provision of health and retirement benefits for employees. The rules must adjust the bid prices to establish an equivalent basis for bid price and cost comparison among businesses when awarding contracts and between businesses and state employees when determining whether or not a contract is permitted under section 1816-A. These rules must apply to all state departments and agencies. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

[2003, c. 501, §2 (NEW) .]

12. Vendor's fee. The State Purchasing Agent may collect a fee in an amount equal to 1% of the bid from a supplier of apparel, footwear or textiles with a winning bid under this section. The State Purchasing Agent shall apply the fee under this subsection to the costs of implementing and administering the state purchasing code of conduct under section 1825-L, including developing a consortium to monitor and investigate alleged violations of the code of conduct. The State Purchasing Agent shall adopt routine technical rules under chapter 375, subchapter 2-A to carry out the purposes of this subsection.

[2007, c. 193, §1 (NEW) .]

13. Vendor's fee report. By January 15th of each year the Director of the Bureau of General Services shall submit a report to the joint standing committee of the Legislature having jurisdiction over state and local government matters concerning revenue generated by the vendor's fee established in subsection 12.

[2007, c. 193, §2 (NEW) .]

14. Condition of doing business with the State. Notwithstanding any provision of law to the contrary, any purchase by the State of \$100,000 or more of tangible personal property, except for public utility purchases, as defined in Title 36, section 1752, subsection 17, or emergency purchases pursuant to subsection 2, paragraph B, may be made only from a person who is registered as a seller pursuant to Title 36, section 1754-B. As a condition of doing business with the State, the seller must collect, report and remit taxes in accordance with Title 36, Part 3. As provided in this subsection, the State is prohibited from doing business with a person who is not registered as a seller pursuant to Title 36, section 1754-B and is not in compliance with the requirement to collect, report and remit taxes pursuant to Title 36, Part 3. After notification of the award, the seller must provide the State Purchasing Agent with a valid retailer certificate issued by the State Tax Assessor within 7 business days. If the seller fails to provide the registration certificate within 7 business

days, the State Purchasing Agent may cancel the award and make a new award pursuant to subsection 7. The State Purchasing Agent shall provide the State Tax Assessor with a copy of all contracts awarded pursuant to this section. The State Tax Assessor shall notify the State Purchasing Agent if at any time during the term of the contract the person is no longer registered or is not collecting, reporting and remitting taxes in compliance with the requirements of Title 36, Part 3. Until the noncompliance is corrected, the State Purchasing Agent may withhold any payments to the person.

[2007, c. 328, §1 (NEW) .]

SECTION HISTORY

1989, c. 785, §2 (NEW). 1991, c. 515, §1 (AMD). 1991, c. 780, §Y70 (AMD). 1993, c. 640, §1 (AMD). 1995, c. 42, §1 (AMD). 1995, c. 119, §§1-4 (AMD). 1995, c. 387, §1 (AMD). 1995, c. 625, §A5 (AMD). 1997, c. 263, §§1,2 (AMD). 1999, c. 105, §§1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 501, §2 (AMD). 2007, c. 193, §§1, 2 (AMD). 2007, c. 328, §1 (AMD). 2011, c. 555, §1 (AMD).

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